

MONTANA LEGISLATIVE HISTORY

Chapter 156 ~~SB~~ 2009

Bill H _____ SB 325 Original bill & history ☒ C

"Clarifying Provisions of Medical Marijuana Act" (I.M. 148, 200

H. Committee on Human Services

S. Committee on Public Health, Welfare

Hearing Date(s) 3-11 _____ C

Hearing Date(s) 2-6 _____ C

_____ C

2-9 _____ C

_____ C

_____ C

_____ C

_____ C

Date Out 3-11 _____ C

out 2-9

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

4/01 CHAPTER NUMBER ASSIGNED
CHAPTER NUMBER 138
EFFECTIVE DATE: 10/01/2009 - ALL SECTIONS

SB 324 INTRODUCED BY V. JACKSON

LC0190 DRAFTER: KOLMAN

REVISE LAWS RELATED TO POWER GENERATION WATER RIGHTS

1/31 INTRODUCED
1/31 REFERRED TO NATURAL RESOURCES
2/11 HEARING
2/21 TABLED IN COMMITTEE
2/26 MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL
DIED IN STANDING COMMITTEE

SB 325 INTRODUCED BY PERRY

LC1678 DRAFTER: O'CONNELL

CLARIFYING PROVISIONS OF THE MEDICAL MARIJUANA ACT

1/31	INTRODUCED		
1/31	REFERRED TO PUBLIC HEALTH, WELFARE AND SAFETY		
2/06	HEARING		
2/10	COMMITTEE EXEC ACTION—BILL PASSED	6	0
2/10	COMMITTEE REPORT—BILL PASSED		
2/12	2ND READING PASSED ON VOICE VOTE	50	0
2/13	3RD READING PASSED	50	0

2/14	TRANSMITTED TO HOUSE		
3/11	REFERRED TO HUMAN SERVICES		
3/11	HEARING		
3/12	COMMITTEE EXEC ACTION—BILL CONCURRED	16	0
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/21	2ND READING CONCURRED	94	6
3/23	3RD READING CONCURRED	91	9

RETURNED TO SENATE
3/23 SENT TO ENROLLING
3/24 RETURNED FROM ENROLLING
3/25 SIGNED BY PRESIDENT
3/26 SIGNED BY SPEAKER
3/26 TRANSMITTED TO GOVERNOR
4/03 SIGNED BY GOVERNOR
4/03 CHAPTER NUMBER ASSIGNED
CHAPTER NUMBER 156
EFFECTIVE DATE: 10/01/2009 - ALL SECTIONS

SB 326 INTRODUCED BY ERICKSON

LC0627 DRAFTER: L. JACKSON

REVISE MEDICAL MARIJUANA LAWS

1/31	INTRODUCED		
1/31	REFERRED TO PUBLIC HEALTH, WELFARE AND SAFETY		
2/06	HEARING		
2/16	COMMITTEE EXEC ACTION—BILL PASSED AS AMENDED	5	2
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	25	24
2/23	FISCAL NOTE REQUESTED		
2/24	3RD READING PASSED	28	22

2/24	TRANSMITTED TO HOUSE		
3/06	REFERRED TO HUMAN SERVICES		
3/06	FISCAL NOTE RECEIVED		
3/09	FISCAL NOTE PRINTED		
3/20	HEARING		
3/30	COMMITTEE VOTE FAILED; REMAINS IN COMMITTEE	8	8
	DIED IN STANDING COMMITTEE		

SB 327 INTRODUCED BY CURTISS

LC2091 DRAFTER: PETESCH

PROTECTION FOR MOTHERS TO BE

1/09 FISCAL NOTE PROBABLE
1/31 INTRODUCED
1/31 REFERRED TO JUDICIARY
1/31 FISCAL NOTE REQUESTED
2/06 FISCAL NOTE RECEIVED
2/07 FISCAL NOTE PRINTED

INITIATIVE NO. 148

A LAW PROPOSED BY INITIATIVE PETITION

This initiative would allow the production, possession, and use of marijuana by patients with debilitating medical conditions. Patients could use marijuana, under medical supervision, to alleviate the symptoms of conditions including cancer, glaucoma, and HIV/AIDS, or other conditions or treatments that produce wasting, severe or chronic pain, severe nausea, seizures, severe muscle spasms, or other conditions defined by the State. A patient or the patient's caregiver could register to grow and possess limited amounts of marijuana by submitting to the State written certification by a physician that the patient has a debilitating medical condition and would benefit from using marijuana.

There would be no measurable cost to state government from the approval of this initiative.

- ☐ FOR allowing the limited use of marijuana, under medical supervision, by patients with debilitating medical conditions to alleviate the symptoms of their conditions.
- ☐ AGAINST allowing the limited use of marijuana, under medical supervision, by patients with debilitating medical conditions to alleviate the symptoms of their conditions.

The language above is the official ballot language. The arguments and rebuttals on the following three pages have been prepared by the committees appointed to support or oppose the ballot measure. The opinions stated in the arguments and rebuttals do not necessarily represent the views of the State of Montana. The State also does not guarantee the truth or accuracy of any statement made in the arguments or rebuttals.

The PROPONENT argument and rebuttal for this measure were prepared by Representative Ron Erickson, Paul Befumo, and Robin Prosser.

The OPPONENT argument and rebuttal for this measure were prepared by Representative Jim Shockley and Roger Curtiss NCAC II, LAC.

ARGUMENT FOR I-148

Currently, under Montana law, patients suffering from cancer, multiple sclerosis, AIDS, and other serious illnesses face six months in prison and a \$500 fine for using marijuana for medical purposes. If passed by a majority of Montana voters, I-148 would protect these patients from arrest and prison if they have their physicians' approval to use marijuana for medical purposes. Perhaps most importantly, I-148 would allow patients to grow their own personal supply of marijuana so that they will no longer have to buy marijuana from the criminal market.

I-148 is similar to the laws in nine states – Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, Vermont, and Washington. In November of 2002, the investigative arm of Congress issued a report which found that these laws are working well and have not created problems for law enforcement officials. Like the laws in most of these nine states, I-148 would provide ID cards to legitimate patients so that police can easily distinguish between recreational marijuana users and legitimate medical marijuana users.

The American Nurses Association, the American Public Health Association, the American Academy of Family Physicians, and several state medical associations have all issued positions supporting the medical use of marijuana under physicians' supervision. Like the medical community, the American people also support medical marijuana. A national public opinion survey conducted by CNN and Time magazine in 2002 found that 80% of the American people "think adults should be able to use marijuana legally for medical purposes."

Statewide medical marijuana studies in California, Georgia, Michigan, New Mexico, New York, and Tennessee have found that marijuana is medically beneficial for many patients suffering from cancer or glaucoma. In 1999, scientists at the National Academy of Sciences issued a comprehensive report that analyzed these state studies and all other medical marijuana research, concluding, "Nausea, appetite loss, pain, and anxiety are all afflictions of wasting, and all can be mitigated by marijuana." This report was commissioned by the White House drug policy office.

Federal courts have recently ruled that (1) the federal government may not punish physicians who recommend medical marijuana to their patients, and (2) the federal government does not have the constitutional authority to arrest patients whose medical marijuana use is intrastate in nature.

Since 1978, the federal government has provided medical marijuana to a limited number of patients suffering from AIDS, glaucoma, multiple sclerosis, and rare bone disorders. Seven of these patients are still receiving monthly shipments of medical marijuana from the federal government. The federal government shouldn't be playing favorites. If it's okay for the federal government to use taxpayer money to send marijuana to these seven patients who live in California, Florida, Iowa, Nebraska, and Texas, then it should be okay for Montana patients to use medical marijuana – at no expense to the taxpayers.

Montana voters should pass I-148, so that Montana patients who need to use medical marijuana will no longer have to live in fear of being arrested and sent to prison.

ARGUMENT AGAINST I-148

Marijuana is still a federally designated Schedule I Drug, meaning dangerous, having a high potential for abuse, and having no medical value, notwithstanding the creative attempts by those who seek its legalization and want to label marijuana use as "compassionate" in medical settings.

This medical marijuana initiative undermines Montana's drug-enforcement priorities and our well-designed federal Food and Drug Administration system, and its rigorous scientific and medical process of approval of new drugs that protect the people of the United States from unsafe, ineffective drugs.

Marijuana is derived from the leaves and flowering tops of the Cannabis plant. It contains some 420 chemicals, most of which have never been studied by scientists. One cannabinoid, Delta-9-tetrahydrocannabinol (THC), was synthesized, tested, and approved by the FDA in 1985 for treating nausea in cancer patients and wasting in AIDS patients. This FDA-approved drug's trade name is Marinol.

Furthermore the respiratory difficulties associated with marijuana use preclude the inhaled route of administration as a medicine. Smoking marijuana is associated with higher concentrations of tar, carbon monoxide, and carcinogens than are found in cigarette smoking.

We need to be concerned with the legalization advocates' efforts to confuse the public about the difference between marijuana and legal medications prescribed and monitored by doctors. These advocates' assertions continue to contribute to the past decade's drop in the perception of marijuana's harmfulness, and this has resulted in an increase in marijuana use, other drug use, and drug addiction.

Even if Montana Initiative 148 should pass, there are still federal laws making it illegal to grow, sell, purchase or use marijuana even with a doctor's prescription.

Vote No on Initiative 148, the Montana Medical Marijuana Act.

PROPOSERS' REBUTTAL OF ARGUMENT AGAINST I-148

The opponents of Initiative 148 make many inaccurate and misleading statements. Here is the truth:

- The federal law that claims marijuana has no medical value was written by politicians – not doctors or scientists – and science has learned much since that law was enacted in 1970. A 1999 Institute of Medicine study, commissioned by the White House, found, "Nausea, appetite loss, pain, and anxiety ... all can be mitigated by marijuana."
- Medical marijuana laws do not undermine law enforcement. Such laws are working successfully in nine states, which comprise one-fifth of the U.S. population. When the congressional General Accounting Office investigated the impact of state medical marijuana laws, most law-enforcement agencies reported that these laws had little or no impact on their law-enforcement activities.
- Medical marijuana laws do not encourage teen drug use. California passed the first state medical marijuana law in 1996, and teen marijuana use in California has dropped since then – even dropping by as much as 40% in some age groups.
- Medical marijuana laws do not undermine the FDA. The FDA never banned the medical use of marijuana; politicians in Washington, D.C., did.

It was politicians who made the decision to arrest and jail cancer, multiple sclerosis, and AIDS patients who find relief through medical marijuana. Montanans can and should use the initiative process to fix the politicians' mistake.

Please vote "yes" on Initiative 148, the Montana Medical Marijuana Act.

OPPOSERS' REBUTTAL OF ARGUMENT FOR I-148

The Food and Drug Administration has not approved marijuana as safe or effective for medical use. Every medicine that doctors prescribe must first be tested to prove that it is safe and effective, that it does what its manufacturer claims it does and that its benefits outweigh its risks.

Contrary to the assertions of I-148 proponents, John A. Benson, Jr., Co-Principal Investigator of a National Academy of Sciences 1999 report, found that, "While we see a future in the development of chemically defined cannabinoid drugs, we see little future in smoked marijuana as a medicine." This report notes there are safer, more effective medicines for all diseases that advocates claim marijuana relieves. It calls for research and clinical trials of cannabinoids, but not whole marijuana, and warns that smoking is not an acceptable delivery system for any medicine.

Montana patients deserve the best medicine science can provide. Montana voters should defeat I-148.

CONSTITUTIONAL INITIATIVE NO. 96

Montana statutes define civil marriage as between a man and a woman, and prohibit marriage between persons of the same sex. The Montana Constitution currently contains no provisions defining marriage. This initiative, effective immediately, would amend the Montana Constitution to provide that only a marriage between a man and a woman may be valid if performed in Montana, or recognized in Montana if performed in another state.

Constitutional Initiative No. 96 was approved by the following vote at the General Election held November 2, 2004:

For: 295,070

Against: 148,263

The text of the Initiative follows:

NEW SECTION. Section 1. Article XIII of The Constitution of the State of Montana is amended by adding a new section 7 that reads:

Section 7. Marriage. Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state.

Section 2. Effective Date. This amendment is effective upon approval by the electorate.

INITIATIVE NO. 148

This initiative would allow the production, possession, and use of marijuana by patients with debilitating medical conditions. Patients could use marijuana, under medical supervision, to alleviate the symptoms of conditions including cancer, glaucoma, and HIV/AIDS, or other conditions or treatments that produce wasting, severe or chronic pain, severe nausea, seizures, severe muscle spasms, or other conditions defined by the State. A patient or the patient's caregiver could register to grow and possess limited amounts of marijuana by submitting to the State written certification by a physician that the patient has a debilitating medical condition and would benefit from using marijuana.

There would be no measurable cost to state government from the approval of this initiative.

Initiative No.148 was approved by the following vote at the General Election held November 2, 2004:

For: 276,042

Against: 170,579

The text of the Initiative follows:

NEW SECTION. Section 1. Short title. [Sections 1 through 9] may be cited as the "Medical Marijuana Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

- (i) cachexia or wasting syndrome;
 - (ii) severe or chronic pain;
 - (iii) severe nausea;
 - (iv) seizures, including but not limited to seizures caused by epilepsy; or
 - (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or
- (c) any other medical condition or treatment for a medical condition adopted by the department by rule.

(2) "Department" means the department of public health and human services.

(3) "Marijuana" has the meaning provided in 50-32-101.

(4) "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition.

(5) "Physician" means a person who is licensed under Title 37, chapter 3.

(6) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(7) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(8) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.

(9) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

(b) The term does not include the seeds, stalks, and roots of the plant.

(10) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

NEW SECTION. Section 3. Procedures — minors — confidentiality — report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of [sections 1 through 9].

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;

(d) the name, address, and telephone number of the qualifying patient's physician; and

(e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the custodial parent or legal guardian with responsibility for health care decisions for the minor signs and submits a written statement that:

(a) the minor's physician has explained to that minor and to the custodial parent or legal guardian with responsibility for health care decisions for the minor the potential risks and benefits of the medical use of marijuana; and

(b) the custodial parent or legal guardian with responsibility for health care decisions for the minor:

(i) consents to the medical use of marijuana by the minor;

(ii) agrees to serve as the minor's caregiver; and

(iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver. The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense. A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of [sections 1 through 9]. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

(a) the name, address, and date of birth of the qualifying patient;

(b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

(c) the date of issuance and expiration date of the registry identification card; and

(d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's

debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department; or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians.

NEW SECTION. Section 4. Medical use of marijuana — legal protections — limits on amount — presumption of medical use. (1) A qualifying patient or caregiver who possesses a registry identification card issued pursuant to [section 3] may not be arrested, prosecuted, or penalized in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, for the medical use of marijuana or for assisting in the medical use of marijuana if the qualifying patient or caregiver possesses marijuana not in excess of the amounts allowed in subsection (2).

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any

other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under [sections 1 through 9].

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department.

NEW SECTION. Section 5. Disclosure of confidential information relating to medical use of marijuana — penalty. (1) A person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of [section 3].

(2) A person convicted of disclosure of confidential information relating to medical use of marijuana shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

NEW SECTION. Section 6. Limitations of medical marijuana act. (1) [Sections 1 through 9] do not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) the smoking of marijuana:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in [sections 1 through 9] may be construed to require:

(a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate the medical use of marijuana in any workplace.

NEW SECTION. Section 7. Affirmative defense. Except as provided in [section 6], it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:

(1) (a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or

(b) provides marijuana to a person described in subsection (a) if the person does not provide marijuana to anyone for uses that are not medical;

(2) is engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a); and

(3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a).

NEW SECTION. Section 8. Fraudulent representation of medical use of marijuana — penalty. (1) A person commits the offense of fraudulent representation of medical use of marijuana if the person knowingly or purposely fabricates or misrepresents a registry identification card to a law enforcement officer.

(2) A person convicted of fraudulent representation of medical use of marijuana shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

NEW SECTION. Section 9. Rulemaking — fees. The department shall adopt rules necessary for the implementation and administration of [sections 1 through 9]. The rules must address the manner in which the department will consider application for and renewals of registry identification cards for qualifying patients and caregivers. The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering [sections 1 through 9]. The department may vary the application and renewal fees along a sliding scale that accounts for a qualifying patient's income.

Section 10. Section 37-1-136, MCA, is amended to read:

“37-1-136. Disciplinary authority of boards — injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with [sections 1 through 9].”

Section 11. Section 45-9-101, MCA, is amended to read:

“45-9-101. Criminal distribution of dangerous drugs. (1) A Except as provided in [sections 1 through 9], a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchange, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.”

Section 12. Section 45-9-102, MCA, is amended to read:

“45-9-102. Criminal possession of dangerous drugs. (1) A Except as provided in [sections 1 through 9], a person commits the offense of criminal

possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or by both.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

(6) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(7) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 13. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to distribute. (1) A Except as provided in [sections 1 through 9], a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 14. Section 45-9-110, MCA, is amended to read:

"45-9-110. Criminal production or manufacture of dangerous drugs. (1) A Except as provided in [sections 1 through 9], a person commits the offense of criminal production or manufacture of dangerous drugs if the person

knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than \$50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 15. Section 45-9-127, MCA, is amended to read:

"45-9-127. Carrying dangerous drugs on train — penalty. (1) ~~A Except as provided in [sections 1 through 9], a person commits the offense of carrying dangerous drugs on a train in this state if he the person~~ is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

(2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102."

Section 16. Section 45-10-107, MCA, is amended to read:

"45-10-107. Exemptions. Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice and persons in compliance with [sections 1 through 9] are exempt from this part."

NEW SECTION. Section 17. Codification instruction. Sections 1 through 9 are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to sections 1 through 9.

NEW SECTION. Section 18. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 19. Effective date. This act is effective upon approval by the electorate.

INITIATIVE NO. 149

This initiative increases tobacco taxes by approximately 140%, to \$1.70 per pack of cigarettes, 85¢ per ounce of moist snuff, and 50% on all other tobacco products, and changes the use of these revenues. The initiative reserves approximately 45% of these revenues for: additional enrollment in the children's health insurance program; increased Medicaid services and provider rates; and, if created by the legislature, a supplemental need-based prescription drug program for certain groups, and programs to help small businesses provide employee health insurance. Remaining revenues are allocated to state veterans' nursing homes, the state building fund, and the general fund.

In fiscal year 2005 this initiative would raise \$38,400,000 for new health insurance and Medicaid initiatives, and an additional \$400,000 for state buildings and \$6,000,000 for the general fund. These revenues could decrease over time as fewer persons consume tobacco. Funding for state veterans' nursing homes would remain at \$2,000,000.

Initiative No.149 was approved by the following vote at the General Election held November 2, 2004:

For: 282,448

Against: 163,626

The text of the Initiative follows:

PREAMBLE

WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8 %.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend \$216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

17

Senate BILL NO. 325

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. Except as provided in Title 50, chapter 46,

it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 2. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

(i) cachexia or wasting syndrome;
(ii) severe or chronic pain;
(iii) severe nausea;
(iv) seizures, including but not limited to seizures caused by epilepsy; or
(v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or

(c) any other medical condition or treatment for a medical condition adopted by the department by rule.

(3) "Department" means the department of public health and human services.

(4) "Marijuana" has the meaning provided in 50-32-101.

(5) "Medical use" means:

(a) the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition;

(b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or

(c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a qualifying patient.

(6) "Paraphernalia" has the meaning provided in 45-10-101.

~~(6)~~(7) "Physician" means a person who is licensed under Title 37, chapter 3.

~~(7)~~(8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

~~(8)~~(9) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.

~~(9)~~(10) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

(b) The term does not include the seeds, stalks, and roots of the plant.

~~(10)~~(11) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits

of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

Section 3. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures -- minors -- confidentiality -- report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;
- (d) the name, address, and telephone number of the qualifying patient's physician; and
- (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ signs and submits a written statement that:

(a) the minor's physician has explained to ~~that~~ the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ the potential risks and benefits of the medical use of marijuana; and

(b) the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the~~ minor:

- (i) consents to the medical use of marijuana by the minor;
- (ii) agrees to serve as the minor's caregiver; and
- (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:

(i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver;

and

(ii) acknowledging that possession of the registry identification card does not allow the caregiver to

1 engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing,
2 delivering, transferring, or transporting marijuana for medical use by a qualifying patient.

3 (b) The department may not issue a registry identification card to a proposed caregiver who has
4 previously been convicted of a felony drug offense.

5 (c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying
6 patient's medical use of marijuana.

7 (5) (a) The department shall verify the information contained in an application or renewal submitted
8 pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the
9 application or renewal.

10 (b) The department may deny an application or renewal only if the applicant did not provide the
11 information required pursuant to this section, the department determines that the information was falsified, or the
12 applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection
13 of an application or renewal is considered a final department action, subject to judicial review.

14 (6) The department shall issue a registry identification card within 5 days of approving an application or
15 renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must
16 state:

17 (a) the name, address, and date of birth of the qualifying patient;

18 (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

19 (c) the date of issuance and expiration date of the registry identification card; and

20 (d) other information that the department may specify by rule.

21 (7) A person who has been issued a registry identification card shall notify the department of any change
22 in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's
23 debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the
24 department, the registry identification card is void.

25 (8) The department shall maintain a confidential list of the persons to whom the department has issued
26 registry identification cards. Individual names and other identifying information on the list must be confidential and
27 are not subject to disclosure, except to:

28 (a) authorized employees of the department as necessary to perform official duties of the department;
29 or

30 (b) authorized employees of state or local law enforcement agencies, only as necessary to verify that

2

a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."

Section 4. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of medical use. (1) A ~~qualifying patient or caregiver~~ person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, ~~for the medical use of marijuana or for assisting in the medical use of marijuana~~ if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 5. Section 50-46-205, MCA, is amended to read:

"50-46-205. Limitations of Medical Marijuana Act. (1) This chapter does not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) the use of marijuana by a caregiver; or

~~(b)~~(c) the smoking of marijuana by a qualifying patient:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in this chapter may be construed to require:

(a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate the medical use of marijuana in any workplace.

(3) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

1
2 **Section 6.** Section 50-46-206, MCA, is amended to read:

3 **"50-46-206. Affirmative defense.** Except as provided in 50-46-205, it is an affirmative defense to any
4 criminal offense involving marijuana that the person charged with the offense:

5 (1) (a) has a physician who states that or has medical records that indicate that, in the physician's
6 professional opinion, after having completed a full assessment of the person's medical history and current medical
7 condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical
8 marijuana would likely outweigh the health risks for the person; or

9 (b) provides marijuana to a person described in subsection (1)(a) if the person does not provide
10 marijuana to anyone for uses that are not medical;

11 (2) (a) is engaged in the acquisition, possession, cultivation, manufacture, ~~use~~, delivery, transfer, or
12 transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms
13 or effects of the medical condition of the person identified in subsection (1)(a) if the person charged with the
14 offense is a qualifying patient or a caregiver; or

15 (b) is engaged in the use of marijuana if the person charged with the offense is a qualifying patient; and

16 (3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted
17 availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the
18 person identified in subsection (1)(a)."

19 - END -

MINUTES

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: Chairman Roy Brown, on February 6, 2009 at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Roy Brown, Chairman (R)
Sen. Terry Murphy, Vice Chairman (R)
Sen. Greg Hinkle (R)
Sen. Cliff Larsen (D)
Sen. Dave Lewis (R)
Sen. Trudi Schmidt (D)

Members Excused:

Sen. Carol C. Juneau (D)

Members Absent: None.

Staff Present: Joan Linkenbach, Committee Secretary
Lisa Mecklenberg Jackson, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 325, 1/31/2009; SB 326,
1/31/2009

Executive Action: SB 44

00:00:49 Chairman Brown

HEARING ON SB 325

Opening Statement by Sponsor:

00:01:26 Sen. Gary Perry (R), SD 35, opened the hearing on SB 325, Clarifying provisions of the Medical Marijuana Act.

Proponents' Testimony:

00:05:24 Pam Bucy, Montana Police Protective Association (MPPA), and the Montana Association of Chiefs of Police (MACOP)
00:05:56 Pat Melby, Montana Medical Association
00:06:33 Craig Allen Campbell, Executive Director, Montana Narcotics Officers Association (MNOA); and Detective, Helena Police Department
00:09:49 Tom Daubert, Government and Public Relations Consultant; Founder of Patients and Family United (PFU)
00:14:23 Bruce Hanson

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

00:20:51 Chairman Brown
00:21:18 Sen. Perry

Closing by Sponsor:

00:21:21 Sen. Perry

HEARING ON SB 326

Opening Statement by Sponsor:

00:21:46 Sen. Ron Erickson (D), SD 47, opened the hearing on SB 326, Revise medical marijuana laws.

EXHIBIT(phs28a01)

EXHIBIT(phs28a02)

00:22:02 Chairman Brown left the room.
00:22:03 Vice Chairman Murphy assumed the chair.

MONTANA STATE SENATE
Roll Call
PUBLIC HEALTH, WELFARE, AND SAFETY COMMITTEE

DATE: 2-6-2009

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
SENATOR ROY BROWN, CHAIRMAN	✓	
SENATOR TERRY MURPHY, VICE CHAIR	✓	
SENATOR GREG HINKLE	✓	
SENATOR CAROL JUNEAU		✓
SENATOR CLIFF LARSEN	✓	
SENATOR DAVE LEWIS	✓	
SENATOR TRUDI SCHMIDT	✓	

MONTANA STATE SENATE

Visitors Register

Public Health, Welfare, and Safety Committee

Date 2-6-09

Bill No. SB 325 Sponsor(s) Perry

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: Chairman Roy Brown, on February 9, 2009 at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Peterson, ex-officio member
Sen. Roy Brown, Chairman (R)
Sen. Terry Murphy, Vice Chairman (R)
Sen. Carol C. Juneau (D)
Sen. Trudi Schmidt (D)

Members Excused:

Sen. Dave Lewis (R)
Sen. Greg Hinkle (R)
Sen. Cliff Larsen (D)

Members Absent: None.

Staff Present: Joan Linkenbach, Committee Secretary
Lisa Mecklenberg Jackson, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 357, 2/4/2009

Executive Action: SB 325, SB 174

00:37:39 Ms. Schillinger, CHBSSS
00:40:17 Chairman Brown
00:41:04 Sen. Moss

Closing by Sponsor:

00:43:30 Sen. Moss
EXHIBIT(phs30a03)

EXECUTIVE ACTION ON SB 325

00:45:38 Chairman Brown
00:47:33 **Motion:** Sen. Murphy moved that **SB 325 DO PASS.**

Discussion:

00:48:07 Sen. Juneau
00:48:14 Chairman Brown
00:49:41 Sen. Schmidt
00:49:48 Lisa Mecklenberg Jackson, Legislative Services Division
(LSD)
00:49:57 Sen. Schmidt
00:50:03 Chairman Brown
00:50:12 **Vote:** Motion carried 6-0 by voice vote, members
present and voting.
00:51:35 Chairman Brown
00:51:40 Sen. Schmidt
00:51:47 Sen. Brown
00:51:56 Sen. Schmidt
00:52:17 Chairman Brown

EXECUTIVE ACTION ON SB 174

00:53:11 **Motion:** Sen. Schmidt moved that **SB 174 DO PASS.**

Discussion:

00:53:20 Sen. Schmidt
00:54:52 **Motion:** Sen. Brown moved that **SB 174 BE AMENDED.**
EXHIBIT(phs30a04)

Discussion:

00:54:10 Chairman Brown

MONTANA STATE SENATE
Roll Call
PUBLIC HEALTH, WELFARE, AND SAFETY COMMITTEE

DATE: 2-9-2009

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
SENATOR ROY BROWN, CHAIRMAN	✓	
SENATOR TERRY MURPHY, VICE CHAIR	✓	
SENATOR GREG HINKLE		✓
SENATOR CAROL JUNEAU	✓	
SENATOR CLIFF LARSEN		✓
SENATOR DAVE LEWIS		✓
SENATOR TRUDI SCHMIDT	✓	
<i>Senator Peterson</i>	✓	



SENATE STANDING COMMITTEE REPORT

February 10, 2009

Page 1 of 1

Mr. President:

We, your committee on **Public Health, Welfare and Safety** recommend that **Senate Bill 325** (first reading copy -- white) **do pass**.

Signed: _____


Senator Roy Brown, Chair

- END -

Committee Vote:

Yes 6, No 0

Fiscal Note Required ☐

SB0325001SC.sdr

SENATE BILL NO.

325

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND
IT WILL NOT BE REPRINTED. PLEASE REFER TO
SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.**

Senate BILL NO. 325

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. Except as provided in Title 50, chapter 46, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 2. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:

(i) cachexia or wasting syndrome;
(ii) severe or chronic pain;
(iii) severe nausea;
(iv) seizures, including but not limited to seizures caused by epilepsy; or
(v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or

(c) any other medical condition or treatment for a medical condition adopted by the department by rule.

(3) "Department" means the department of public health and human services.

(4) "Marijuana" has the meaning provided in 50-32-101.

(5) "Medical use" means:

(a) the acquisition, possession, cultivation, manufacture, ~~use~~, delivery, transfer, or transportation of marijuana or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition;

(b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or

(c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a qualifying patient.

(6) "Paraphernalia" has the meaning provided in 45-10-101.

~~(6)~~(7) "Physician" means a person who is licensed under Title 37, chapter 3.

~~(7)~~(8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

~~(8)~~(9) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.

~~(9)~~(10) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

(b) The term does not include the seeds, stalks, and roots of the plant.

~~(10)~~(11) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits

of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

Section 3. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures -- minors -- confidentiality -- report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;
- (d) the name, address, and telephone number of the qualifying patient's physician; and
- (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ signs and submits a written statement that:

(a) the minor's physician has explained to ~~that~~ the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ the potential risks and benefits of the medical use of marijuana; and

(b) the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the~~ minor:

- (i) consents to the medical use of marijuana by the minor;
- (ii) agrees to serve as the minor's caregiver; and
- (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:

(i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver;

and

(ii) acknowledging that possession of the registry identification card does not allow the caregiver to

1 engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing,
2 delivering, transferring, or transporting marijuana for medical use by a qualifying patient.

3 (b) The department may not issue a registry identification card to a proposed caregiver who has
4 previously been convicted of a felony drug offense.

5 (c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying
6 patient's medical use of marijuana.

7 (5) (a) The department shall verify the information contained in an application or renewal submitted
8 pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the
9 application or renewal.

10 (b) The department may deny an application or renewal only if the applicant did not provide the
11 information required pursuant to this section, the department determines that the information was falsified, or the
12 applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection
13 of an application or renewal is considered a final department action, subject to judicial review.

14 (6) The department shall issue a registry identification card within 5 days of approving an application or
15 renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must
16 state:

17 (a) the name, address, and date of birth of the qualifying patient;

18 (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

19 (c) the date of issuance and expiration date of the registry identification card; and

20 (d) other information that the department may specify by rule.

21 (7) A person who has been issued a registry identification card shall notify the department of any change
22 in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's
23 debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the
24 department, the registry identification card is void.

25 (8) The department shall maintain a confidential list of the persons to whom the department has issued
26 registry identification cards. Individual names and other identifying information on the list must be confidential and
27 are not subject to disclosure, except to:

28 (a) authorized employees of the department as necessary to perform official duties of the department;
29 or

30 (b) authorized employees of state or local law enforcement agencies, only as necessary to verify that

a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."

Section 4. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of medical use. (1) A ~~qualifying patient or caregiver~~ person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, ~~for the medical use of marijuana or for assisting in the medical use of marijuana~~ if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 5. Section 50-46-205, MCA, is amended to read:

"50-46-205. Limitations of Medical Marijuana Act. (1) This chapter does not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; ~~or~~

(b) the use of marijuana by a caregiver; or

~~(b)(c)~~ the smoking of marijuana by a qualifying patient:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in this chapter may be construed to require:

(a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate the medical use of marijuana in any workplace.

(3) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

1
2 **Section 6.** Section 50-46-206, MCA, is amended to read:

3 **"50-46-206. Affirmative defense.** Except as provided in 50-46-205, it is an affirmative defense to any
4 criminal offense involving marijuana that the person charged with the offense:

5 (1) (a) has a physician who states that or has medical records that indicate that, in the physician's
6 professional opinion, after having completed a full assessment of the person's medical history and current medical
7 condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical
8 marijuana would likely outweigh the health risks for the person; or

9 (b) provides marijuana to a person described in subsection (1)(a) if the person does not provide
10 marijuana to anyone for uses that are not medical;

11 (2) (a) is engaged in the acquisition, possession, cultivation, manufacture, ~~use~~, delivery, transfer, or
12 transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms
13 or effects of the medical condition of the person identified in subsection (1)(a) if the person charged with the
14 offense is a qualifying patient or a caregiver; or

15 (b) is engaged in the use of marijuana if the person charged with the offense is a qualifying patient; and

16 (3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted
17 availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the
18 person identified in subsection (1)(a)."

19 - END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: Chairman Arlene Becker, on March 11, 2009 at 3:05 P.M., in Room 152 Capitol

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Mary Caferro, Vice Chairman (D)
Rep. Pat Ingraham, Vice Chairman (R)
Rep. Bill Beck (R)
Rep. Julie French (D)
Rep. David Howard (R)
Rep. Chuck Hunter (D)
Rep. Dave McAlpin (D)
Rep. Pat Noonan (D)
Rep. Ken Peterson (R)
Rep. Diane Sands (D)
Rep. Cary Smith (R)
Rep. Ron Stoker (R)
Rep. Jeffery Welborn (R)

Members Excused: Rep. Timothy Furey (D), Rep. Michael More (R)

Members Absent: None

Staff Present: Santella Baglivo, Committee Secretary
Susan Byorth Fox, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 325, 2/25/2009; SB 432,
2/25/2009

Executive Action: SB 82, SB 119, SB 208, SB 432,
SB 325, SB 26, SB 51, SB 83

Closing by Sponsor:

00:19:56 Sen. Brown
00:20:57 Chairwoman Becker calls a recess.
00:36:11 Chairwoman Becker resumes hearing. Rep. Ingraham does not return from break.

EXECUTIVE ACTION ON SB 82

00:36:40 **Motion:** Rep. Caferro moved that **SB 82 BE CONCURRED IN.**

Discussion:

00:36:53 Chairwoman Becker
00:37:05 Rep. French
00:38:33 Rep. Furey calls the question.
00:38:39 **Vote:** Motion carried unanimously by voice vote. Rep. Ingraham voted by proxy.

EXECUTIVE ACTION ON SB 208

00:39:05 **Motion:** Rep. Caferro moved that **SB 208 BE CONCURRED IN.**

Discussion:

00:39:49 Rep. Stoker
00:40:17 Rep. Sands
00:40:30 Rep. Smith
00:40:39 Rep. Hunter
00:41:10 Rep. Sands calls the question.
00:41:15 **Vote:** Motion carried unanimously by voice vote. Rep. Ingraham voted by proxy.

HEARING ON SB 325

Opening Statement by Sponsor:

00:41:48 Sen. Gary Perry (R), SD 35, opened the hearing on SB 325, Clarifying provisions of the Medical Marijuana Act.

Proponents' Testimony:

00:42:47 Tom Daubert, Patients and Families United

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

00:44:23 Sen. Perry

EXECUTIVE ACTION ON SB 119

00:45:15 **Motion:** Rep. Caferro moved that **SB 119 BE CONCURRED IN.**

00:45:33 **Motion:** Chairwoman Becker moved that **SB 119 BE AMENDED.**

EXHIBIT(huh54a01)

Discussion:

00:47:12 Rep. French
00:47:30 Chairwoman Becker
00:47:55 Rep. French
00:48:06 Chairwoman Becker
00:48:54 Rep. Peterson
00:49:11 Rep. Howard
00:49:16 Rep. Sands called the question.

00:49:20 **Vote:** Motion carried unanimously by voice vote.
Rep. Ingraham voted by proxy.

00:49:36 **Motion:** Rep. Caferro moved that **SB 119 BE CONCURRED IN AS AMENDED.**

Discussion:

00:49:50 Rep. Furey
00:50:34 Rep. French

00:50:55 **Vote:** Motion carried unanimously by roll-call vote.
Rep. Ingraham voted by proxy.

Discussion:

00:51:43 Rep. Howard
00:52:07 Rep. Beck
00:53:07 Chairwoman Becker

EXECUTIVE ACTION ON SB 325

00:53:52 **Motion:** Rep. Caferro moved that **SB 325 BE CONCURRED IN.**

00:54:09 Rep. Sands called the question.

00:54:12 **Vote:** Motion carried unanimously by voice vote.
Rep. Ingraham voted by proxy.

EXECUTIVE ACTION ON SB 432

00:54:30 **Motion:** Rep. Caferro moved that **SB 432 BE CONCURRED IN.**

00:55:23 Rep. Peterson called the question.

00:55:29 **Vote:** Motion carried unanimously by voice vote.
Rep. Ingraham voted by proxy.

EXECUTIVE ACTION ON SB 26

00:56:40 Chairwoman Becker

00:57:01 **Motion:** Rep. Caferro moved that **SB 26 BE CONCURRED IN.**

00:57:13 **Motion:** Chairwoman Becker moved that **SB 26 BE AMENDED.**
EXHIBIT(huh54a02)

00:58:23 Rep. Sands called the question.

00:58:28 **Vote:** Motion carried unanimously by voice vote.
Rep. Ingraham voted by proxy.

Discussion:

00:58:42 Chairwoman Becker

00:58:47 Rep. Ingraham enters.

00:58:50 Rep. Sands

00:59:35 Rep. Peterson

01:00:08 Rep. Caferro called the question.

01:00:13 **Vote:** Motion carried unanimously by voice vote.

HOUSE OF REPRESENTATIVES
Roll Call
HUMAN SERVICES COMMITTEE

DATE: 3-11-09

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Rep. Mary Caferro	X	
Rep. Pat Ingraham	X	
Rep. Bill Beck	X	
Rep. Julie French	X	
Rep. Timothy Furey		X
Rep. David Howard	X	
Rep. Chuck Hunter	X	
Rep. Dave McAlpin	X	
Rep. Michael More		X
Rep. Pat Noonan	X	
Rep. Ken Peterson	X	
Rep. Diane Sands	X	
Rep. Cary Smith	X	
Rep. Ron Stoker	X	
Rep. Jeffery Welborn	X	
Rep. Arlene Becker	X	

AUTHORIZED COMMITTEE PROXY

I request to be excused from the Health + Human Services

Committee because of other commitments. I desire to leave my proxy vote with:

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT AYE NO

SB 82	✓	
SB 119	✓	
Amendment	✓	
SB 208	✓	
SB 325	✓	
Amendment	✓	
SB 26		
SB 432	✓	
SB 51		✓
SB 83		

BILL/AMENDMENT AYE NO

Rep.

Pat Ingraham
(Signature)

Date 3-11-09

**Montana House of Representatives
Visitors Register**

HUMAN SERVICES COMMITTEE

Date 3/11/09

Bill No. SB 325 **Sponsor(s)** Sen. Perry

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Tom Danbert	Patients & Families United	X		
Eric Maclean	MT Medical Assoc	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.



HOUSE STANDING COMMITTEE REPORT

March 12, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Human Services** recommend that **Senate Bill 325** (third reading copy – blue) be concurred in.

Signed: *Arlene Becker*
Representative Arlene Becker, Chair

To be carried by Representative Julie French

- END -

Committee Vote:

Yes 16, No 0

Fiscal Note Required ☐

SB0325001SC05148.hjd



AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. # Except as provided in Title 50, chapter 46, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 2. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.

(b) The term does not include the qualifying patient's physician.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of

the following:

- (i) cachexia or wasting syndrome;
- (ii) severe or chronic pain;
- (iii) severe nausea;
- (iv) seizures, including but not limited to seizures caused by epilepsy; or
- (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or
- (c) any other medical condition or treatment for a medical condition adopted by the department by rule.
- (3) "Department" means the department of public health and human services.
- (4) "Marijuana" has the meaning provided in 50-32-101.
- (5) "Medical use" means:
 - (a) the acquisition, possession, cultivation, manufacture, ~~use~~, delivery, transfer, or transportation of marijuana or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition;
 - (b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or
 - (c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a qualifying patient.
- (6) "Paraphernalia" has the meaning provided in 45-10-101.
- ~~(6)~~(7) "Physician" means a person who is licensed under Title 37, chapter 3.
- ~~(7)~~(8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
- ~~(8)~~(9) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.
- ~~(9)~~(10) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.
- (b) The term does not include the seeds, stalks, and roots of the plant.
- ~~(10)~~(11) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the

qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

Section 3. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures -- minors -- confidentiality -- report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;
- (d) the name, address, and telephone number of the qualifying patient's physician; and
- (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ signs and submits a written statement that:

(a) the minor's physician has explained to ~~that the~~ the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the minor~~ the potential risks and benefits of the medical use of marijuana; and

(b) the minor's custodial parent or legal guardian with responsibility for health care decisions ~~for the~~ minor:

- (i) consents to the medical use of marijuana by the minor;
- (ii) agrees to serve as the minor's caregiver; and
- (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:

(i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver;
and

(ii) acknowledging that possession of the registry identification card does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a qualifying patient.

(b) The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense.

(c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

- (a) the name, address, and date of birth of the qualifying patient;
- (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;
- (c) the date of issuance and expiration date of the registry identification card; and
- (d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and

are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department;

or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."

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"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of medical use. (1) A ~~qualifying patient or caregiver~~ person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, ~~for the medical use of marijuana or for assisting in the medical use of marijuana~~ if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the

purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

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(b) the use of marijuana by a caregiver; or

~~(b)~~(c) the smoking of marijuana by a qualifying patient:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

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(1) (a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or

(b) provides marijuana to a person described in subsection (1)(a) if the person does not provide marijuana to anyone for uses that are not medical;

(2) (a) is engaged in the acquisition, possession, cultivation, manufacture, ~~use~~, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a) if the person charged with the offense is a qualifying patient or a caregiver; or

(b) is engaged in the use of marijuana if the person charged with the offense is a qualifying patient; and

(3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a)."

- END -